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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
THE ILLINOIS COMMERCE)
COMMISSION, On its own motion,)
)
Complainant,)
) No. 01-0707
vs.)
)
THE PEOPLES GAS LIGHT and COKE)
COMPANY, Reconciliation of)
revenues collected under the)
gas adjustment charges with)
actual costs prudently)
incurred,

Respondents.

Chicago, Illinois
September 27, 2004

Met, pursuant to notice, at 10:30.

BEFORE:

Judge Claudia Sainsot, Administrative Law Judge

1 APPEARANCES:

2 McGUIREWOODS, LLP, by
3 MR. THOMAS MULROY
4 MS. MARY KLYASHEFF
5 77 W. Wacker Drive
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9 for PEOPLE GAS LIGHT & COKE COMPANY;

10 CITIZENS UTILITY BOARD, by
11 MS. JULIE SODERNA and
12 MR. STEVEN WU
13 208 S. LASALLE STREET, Suite 1760
14 Chicago, Illinois 60602
15 for Citizen Utility Board

16 THE PEOPLE OF THE STATE OF ILLINOIS, by
17 MR. RANDOLPH CLARKE
18 100 W. Randolph Street
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21 for The People of the State of Illinois;

22 THE CITY OF CHICAGO, by
23 MR. RONALD D. JOLLY
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29 for, THE CITY OF CHICAGO

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1 APPEARANCES (Continued)

2 THE ILLINOIS COMMERCE COMMISSION, by
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14 SULLIVAN REPORTING COMPANY, by
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I N D E X

		Re-	Re-	By	
<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>
	(None presented.)				

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
	(None marked.)	

1 JUDGE SAINSOT: By the authority invested in me
2 by the Illinois Commerce Commission, I now call
3 Docket No. 01-0707. It is the Illinois Commerce
4 Commission on its own motion versus Peoples Gas Light
5 and Coke Company.

6 And it concerns a reconciliation of
7 revenues collected under gas adjustment charges with
8 actual costs.

9 MR. BRADY: Appearing on behalf the staff of
10 the Illinois Commerce Commission, James E. Wegin,
11 W-e-g-i-n-g, and Sean R. Brady, 160 North LaSalle
12 Street, Suite C800, Chicago, Illinois 60601.

13 MS. SODERNA: Julie Soderna and Stephen Wu on
14 behalf of the Citizens Utility Board, 208 South
15 LaSalle, Suite 1960, Chicago, Illinois 60604.

16 MR. JOLLY: On behalf of the City of Chicago,
17 Ronald E. Jolly Conrad R. Reddick, 30 North LaSalle,
18 Suite 900, Chicago, Illinois 60601.

19 MR. CLARKE: On behalf of the People of the
20 State of Illinois, Randolph Clarke, 100 West Randolph
21 Street, 11th Floor, Chicago, Illinois 60601.

22 MS. KLYASHEFF: Appearing for the Peoples Gas

1 Light and Coke Company, Thomas Mulroy, Mary Klyasheff
2 with McGuire Woods at 77 West Wacker, Chicago 60601.

3 JUDGE SAINSOT: Okay. Can someone enlighten me
4 as to where we are on the joint motion to amend the
5 schedule.

6 MR. MULROY: Your Honor, it was actually at my
7 suggestion that you continued this status hearing to
8 today to see if the parties could work out a
9 schedule.

10 As I told you the last time I was
11 before you, our client feels extraordinarily strongly
12 that this case has to go to hearing this year.

13 It's a 2 or \$250 million case that's
14 been on their books now since 2001, and this schedule
15 has been continued several times, I know, since the
16 beginning of this case. The case was filed, as you
17 know, in November of 2001.

18 And we have this year produced answers
19 to over 900 data requests. We produced, as you know,
20 40 boxes of documents relatively recently and we're
21 now in the process of organizing them by question.
22 We have allowed the intervenors and the staff to

1 search our attorney/client privilege log and to look
2 at the documents that are in this very voluminous
3 log.

4 We let them have access to our work
5 papers in connection with an audit, which some of
6 them have looked at. We produced an enormous volume
7 of material. Much of it, I predicted at the time
8 would be irrelevant in connection with this
9 electronic search.

10 Staff, at least, and maybe intervenors
11 also want to take 20 additional depositions and
12 possibly even ask for more discovery. The same
13 issues that have been before you and were before you
14 in November of 2001 are before you now. There's
15 nothing that has been formally added to this case.

16 Enron, which as you know, has been in
17 bankruptcy for years apparently is the subject -- or
18 is going to be -- try to be the subject of additional
19 testimony.

20 The hedging issue is one that jumps to
21 mind, which hasn't changed in three years, and I
22 don't think any new evidence has been raised about

1 that at all. And it certainly seems to me that
2 that's an issue, and I've also mentioned this to you
3 earlier, that can be disposed of maybe by itself.

4 But this company cannot continue to
5 carry this \$200 million number in its public filings
6 and its press releases. We need to get this case to
7 trial this year. And I know you've heard me say that
8 before.

9 We urge you to keep the schedule that
10 we have. We think it's well within your discretion
11 to do that. We think that the intervenors and staff
12 have had plenty of time to develop their issues and
13 witnesses and look at the additional information we
14 provided, much of is not relevant.

15 And, Judge, we don't think, when they
16 haven't even looked at the papers we've given them
17 and haven't even looked at our attorney/client
18 privilege log and haven't even finished review of the
19 work papers, that this case should be continued even
20 more.

21 So I'm sorry to say that we couldn't
22 reach agreement, and I urge you to keep this date for

1 hearing in November.

2 JUDGE SAINSOT: Okay. Mr. Weling, what are
3 these new affidavits about?

4 MR. WEGING: The new affidavits specify
5 problems that staff has identified with the responses
6 we received to certain -- obviously not completely
7 comprehensive, but certain examples of the type of
8 answers we received from Peoples Gas to certain data
9 requests and finding documents that would indicate
10 those answers were incomplete and somewhat
11 misleading.

12 MR. BRADY: The answers that Peoples Gas had
13 provided to staff in response to data request
14 questions propounded both in 2002 and 2003.

15 Some of the documents that we found,
16 both paper and electronic documents, seem to be --
17 are responsive and provide information that would
18 have been responsive to those questions had that
19 information been provided at that time.

20 JUDGE SAINSOT: Now, I'm a little confused.
21 Didn't I deny the join motion to amend?

22 MR. WEGING: No.

1 MR. BRADY: No. At least --

2 MR. JOLLY: No.

3 MR. WEGING: You indicated you did not like the
4 proposed schedule, and intervenors and staff did
5 propose a shortening of that schedule to meet your
6 concerns. However, the motion to amend had not been
7 denied.

8 JUDGE SAINSOT: Okay. So in substance, it had
9 not.

10 MR. CLARK: Your Honor, if I may reply to some
11 of the points that counsel for Peoples brought up.

12 MR. MULROY: Would it be rude if I got to reply
13 to what they just said.

14 MR. CLARK: As long as we keep track of who
15 gets to go next.

16 MR. MULROY: Thank you for telling us about the
17 affidavits you filed. I don't know whether we
18 objected to the questions that you're referring to or
19 not. I don't know if we were ordered to answer the
20 questions.

21 We look forward to reviewing these
22 affidavits and certainly help you get whatever

1 information you want.

2 Sorry, Mr. Clark.

3 MR. CLARK: Counsel for Peoples pointed out,
4 and as you know, they produced a large number of
5 paper documents, a large number of electronic
6 documents.

7 And as the record reflects in numerous
8 places in these proceedings, the electronic documents
9 they produced were not responsive to any discovery
10 requests. The large majority of the electronics
11 documents that they produced were not responsive to
12 the discovery requests that were asked of them but
13 were material provided for a different proceeding or
14 compiled for a different proceeding.

15 Peoples' counsel indicated that they
16 are now in the process of determining what documents
17 in the paper boxes they produced respond to what
18 question. Of course that will take time. If that
19 would have been done initially, we wouldn't be at a
20 point where we are now, where they're just now trying
21 to properly answer the questions.

22 So its the Attorney General's position

1 that the discovery responses, both paper and
2 electronic, are not responsive to the questions,
3 haven't been --

4 JUDGE SAINSOT: Mr. Clarke, I don't want to cut
5 you off, but we've been around and around and around
6 on this, and we get into a mindset here that is not
7 productive. You can't just sit there and blame the
8 opposing counsel.

9 We need to move forward with this
10 case, and, you know, at some point we have to get
11 beyond the fault thing and move forward.

12 MR. JOLLY: Well, here's the reality of moving
13 forward, is that we were provided, what is it, 175
14 gigabits of information at the end of July,
15 information that apparently was provided to the
16 Attorney General sometime in March, but for some
17 reason we weren't provided that until July. So
18 there's that point.

19 But we have assiduously been trying to
20 put that information into a database which is
21 searchable, which we've recently been able to do.

22 And it's an enormous amount of

1 information that we have consultants, who we're
2 paying large sums of money, who are reviewing this
3 data as we speak and we're continuing to review it.

4 Prior to that, we received at the end
5 of March 43 boxes of information in which we spent a
6 couple months indexing, going through that
7 information and culling from that information that is
8 relevant and goes to the issues in this case.

9 So I think that's just a statement of
10 where we are in reviewing this -- this enormous
11 amount of information that Mr. Mulroy alludes to.

12 MS. SODERNA: I think to that point I'd just
13 like to say that, you know, CUB and intervenors that
14 we believe we've shown diligence in our discovery
15 deposition review and we've asked follow-up discovery
16 and we have instituted very sophisticated computer
17 software systems to assist us in this process. And
18 we are really doing our best to give due diligence to
19 this discovery and to move the case along.

20 We certainly by no means are
21 attempting to impose delay of the case. That doesn't
22 serve our constituency, nor does it serve Peoples.

1 JUDGE SAINCOT: In all candor, Mr. Mulroy, and
2 I just want to get this out of the way, I don't think
3 2004 is doable.

4 I'm not comfortable with moving the
5 trial date, as I indicated at last week's hearing, to
6 July, but there is something that can be reached
7 between January of 2005 and July of 2005. And I wish
8 it -- I thought it were possible to do the trial in
9 November, but I don't think it's even possible to do
10 it in December. I just don't think that's realistic.

11 However, I am not convinced that it
12 needs to be extended for as long as staff says it
13 needs to be extended. I don't even know, based on
14 the information that staff gave me in support of the
15 joint motion to amend, whether May is too far out. I
16 don't have full graphs of that.

17 I don't know, I can impose a trial
18 date and impose other dates, but realistically, I'm a
19 little uncomfortable setting a date without having
20 some realistic expectations about what can be
21 accomplished in the next few months.

22 MR. MULROY: Your Honor, you'll recall that the

1 staff has January 14th to have their testimony filed.
2 So even though it sounds like there's a lot of
3 discovery that everybody has to go through, I think
4 the likelihood of us getting to this hearing this
5 year might be more realistic than you give it credit
6 for.

7 This has become from the Company's
8 viewpoint a discovery Vietnam. Every time we come in
9 here, more questions are asked and then more answers
10 have to be given.

11 Now, we are in the process now,
12 pursuant to your order that Mr. Clark referred to, of
13 organizing some of these 40 boxes pursuant to four
14 questions. We're going pretty quickly on that and we
15 think we're going to have that done pretty fast.

16 But rather than do all of this
17 additional discovery, it seems to me, and I'd like to
18 suggest to you, that we start preparing this case for
19 trial. This is an idea that I got from you about
20 five months ago. We haven't made any progress at all
21 towards preparing this case for trial.

22 JUDGE SAINSOT: Yeah, I don't see any --

1 MS. SODERNA: I disagree. I think the
2 discovery process that we've been going through is
3 directly in preparation for trial.

4 MR. BRADY: The production dates -- the dates
5 on which you've produced the responses to these
6 documents have also impacted the timing of this
7 trial.

8 JUDGE SAINSOT: Well, discovery always has an
9 impact on trial, but I don't see you in a position --
10 in the position that you need to be right before
11 trial. And I do that believe that if you -- don't
12 forget that you all resisted having any trial date
13 for a few months there, and I had to impose it on my
14 own.

15 You know, I would strongly urge -- I
16 mean, I'll let you talk it over amongst yourselves,
17 if you all think that will do any good, but what I
18 impose will probably make everybody unhappy. And I
19 don't want to do that if there's a way that something
20 can be reached that is more accommodating but yet
21 more realistic.

22 If I impose a date, I don't know how

1 close staff is at this point to getting its pre-filed
2 testimony done, for example. So if I start imposing
3 things at this point, you will not be happy.

4 At the same time, Mr. Mulroy, I think
5 you're absolutely correct, that if we don't have a
6 firm trial date and if we don't work toward trial,
7 and that means more than going over documents, that
8 means getting the depositions out of the way quickly,
9 that means getting the pre-filed testimony out of the
10 way, that means getting the motions in limine
11 organized, all the things that you do when you're
12 ready to try a case, those things need to start
13 happening quickly.

14 And it makes me a little nervous to
15 start setting a schedule without having something --
16 some more concrete indication of where the parties
17 truly are.

18 This may not be productive, but I can
19 leave the parties alone for a few minutes, and if you
20 can't agree on dates, try parameters.

21 I realize that, Mr. Mulroy, your
22 parameter is 2004. And I respect Peoples' position

1 on this, but I don't think 2004 is realistic.

2 MR. MULROY: I heard you say that. And I'm
3 thinking this: They said they could have their
4 pre-filed testimony in January 14th. If you make
5 that pre-filed testimony due November 14th, we could
6 try this case in December, and the burden would be on
7 us to respond, which we will.

8 MR. WEGING: No, that would effectively cut off
9 further discovery in this case, because staff's
10 estimate is it will take six to eight weeks to
11 prepare its testimony once discovery is over with.
12 If we have a November date, we have to start now, and
13 we might as well forget about any further discovery
14 because the staff witnesses will not have time to do
15 further discovery.

16 MR. MULROY: We have no objection to you not
17 putting a discovery cutoff date in at all, and we
18 have no objection if they want to amend their
19 pre-filed testimony based on the discovery that they
20 get through such and such a date.

21 We'll do anything practically to get
22 this case heard this year, Judge.

1 MR. JOLLY: Is Peoples stating that it's
2 waiving its right to file rebuttal testimony?

3 MR. MULROY: I didn't hear that.

4 MR. JOLLY: I'm just asking.

5 MR. MULROY: But depending on what you file, we
6 may not need rebuttal.

7 I think the point here is that the
8 burden will be on us to act fast, which we are
9 prepared to accept. And if we don't file rebuttal,
10 we don't file rebuttal. That shortens the schedule
11 dramatically.

12 MR. JOLLY: To the extent that you do file
13 rebuttal, I think we would like an opportunity to ask
14 discovery questions on that, on that information.

15 MR. MULROY: I'm sure that you would, but I
16 think that since this is a 2001 case, it may be time
17 now to just end the testimony with our response to
18 your newly filed testimony that you have been
19 thinking about for probably a year.

20 MS. SODERNA: Can I just -- I need to point out
21 for the record just on the baseline, we intended to
22 meet this morning at 10:00 o'clock to negotiate

1 scheduling issues. And we sat silent for an hour
2 because Peoples was unwilling to move off of the
3 existing schedule and failed to negotiate at all with
4 regard to the schedule.

5 I mean, now we're hearing a proposal
6 but this is clearly not with the time line we laid
7 out in our motion to amend the schedule, and all of
8 the issues that we've discussed and rehashed over and
9 over, that's not acceptable for intervenors.

10 So I don't know if we should take --
11 is Peoples willing to negotiate at this point on the
12 schedule? Is it even worth taking the time right now
13 to do that?

14 MR. MULROY: Well, if I haven't been clear
15 until now, I would like to be clear now. We need to
16 try this case this year. We'd like to try it in
17 November. The other dates to us are not important.

18 MS. SODERNA: I think we feel equally strongly
19 that we would not be ready to try this case this
20 year.

21 MR. JOLLY: I'm not certain that Peoples'
22 desire to try this case this year is the paramount

1 concern that we should be looking towards. I mean, I
2 appreciate your desire to have it done, but I think
3 the considerations of what has transpired with
4 respect to discovery at this point need to be taken
5 into account.

6 JUDGE SAINSOT: Well, if there were no
7 discovery cutoff and there were no rebuttal, that
8 would --

9 MR. JOLLY: I didn't hear that there was no
10 rebuttal. And I don't think that we would waive the
11 right to conduct discovery of any rebuttal they would
12 file.

13 JUDGE SAINSOT: Well, if they don't file
14 rebuttal.

15 MR. JOLLY: Well, but Mr. Mulroy has not agreed
16 to not file rebuttal. He stated that they were not
17 going to waive it, but that they -- if they didn't
18 think they needed to, they wouldn't file rebuttal,
19 but that's far different than from waiving the right
20 to file rebuttal testimony.

21 MR. MULROY: I guess I need to see your
22 testimony before we make a decision on whether to

1 waive it or not. I don't even know what the new
2 issues are.

3 MR. BRADY: Your Honor, may I comment?

4 JUDGE SAINSOT: Yes.

5 MR. BRADY: In preparing the staff's motion for
6 the amended schedule, the intent was that we would be
7 filing right around this time the -- well, at the
8 time we filed the motion, we were reviewing
9 electronic documents. We needed to provide -- we
10 wanted sufficient time to look at those electronic
11 documents so we would be in a position to file our
12 motion for depositions right around this week here so
13 that we could -- with the idea of taking depositions
14 in late October and early November, which would then
15 allow us -- staff had wanted eight weeks from the
16 time of taking depositions to the time we filed
17 testimony.

18 So if we were to file -- with our goal
19 being wrapping up with depositions the middle of
20 November, eight weeks later would be the middle of
21 January, if that helps you with any of the scheduling
22 matters.

1 JUDGE SAINSOT: Can I ask you something, do you
2 need -- at the ICC, do you need a motion to file --

3 MR. BRADY: Yes, your Honor, plus there's
4 financial considerations.

5 MS. SODERNA: Depositions are actually
6 discouraged.

7 JUDGE SAINSOT: That I know, but, I mean that's
8 kind of ambiguous though.

9 MR. WEGING: Formal discovery by staff must be
10 done by motion, and since deps are considered formal
11 discovery, it's a little bit unclear where informal
12 and formal discovery really split, but definitely the
13 deposition is more on the formal side. And since
14 it's actually being done at the Commission's behest
15 and the staff does it since we're part of the
16 Commission, that's why it's done by motion to the ALJ
17 and/or the commissioners.

18 JUDGE SAINSOT: Our rules are so different from
19 the rest of LaSalle Street.

20 MR. BRADY: Yes.

21 JUDGE SAINSOT: Possibly a bigger --

22 MR. BRADY: So that was some of the thought

1 process, if it helps you at all in the time when we
2 were preparing.

3 JUDGE SAINSOT: And this is quite a mess here.
4 I don't know quite where to begin.

5 How long do you think it's going to
6 take for you to go through all those CDs and DVDs?

7 MR. BRADY: That's difficult to state. All I
8 know is the intent was -- we knew we needed to file
9 the motion, so we were trying to estimate how long it
10 would take at the time we filed the motion so we
11 could provide some definition for this case as far as
12 a time line.

13 So our goal was pretty much where we
14 were at in looking at those documents. We were going
15 to be proceeding with depositions in late October and
16 early November and using whatever information we had
17 filed at that point to move forward with the
18 depositions.

19 JUDGE SAINSOT: You know, this kind of -- I
20 think we touched on this last time. So your plan is
21 to get all the written stuff and then do the
22 depositions?

1 MR. WEGING: Yeah. They're largely going to be
2 largely documentary depositions. We're going to ask
3 the witness what this means in a particular document,
4 that kind of thing.

5 JUDGE SAINSOT: Well, don't you think it makes
6 more sense to just start taking the depositions?

7 MR. WEGING: Well, we --

8 MR. BRADY: I think particularly in light of
9 the fact that a lot of the documents that we received
10 were not actually attributed to specific data
11 requests, it's hard to tie it to a question to
12 understand how it all fits together. So part of it
13 is we've identified key individuals who are familiar
14 with the issues that we want to follow up on. In
15 deposition we want to ask them about those
16 transactions and then also ask them about the
17 documents we've identified.

18 JUDGE SAINSOT: But I don't understand, you
19 can -- if you have more questions of a witness later
20 on, you can ask -- you can take another deposition.

21 MS. SODERNA: Except that the time frame that
22 we're talking about really doesn't allow for that.

1 MR. WEGING: Once we're done with the deps, I
2 mean, basically it will be evidence into trial.

3 I mean, the idea that you would take a
4 dep, say, after the company files its rebuttal
5 testimony, when you've only got a few weeks before
6 trial, I think, is not -- I mean, conceivably there
7 might be a single question or some little issue you
8 might have that you can handle one way or other, but
9 the idea that you're going to be doing discovery by
10 the time we get to right before trial, I think is not
11 practicable, if nothing else.

12 MR. MULROY: I'm not sure if you're still
13 talking about 20 depositions or not, but you know
14 that you have discretion to control the pace of this
15 case.

16 And to be talking about taking 20
17 deposition at the end of this year just doesn't seem
18 to me to be productive or valuable, especially if
19 we're going to ask witnesses what Document A means.
20 Document A may be five or six years old, plus the
21 depositions are only going to last three hours.

22 I just think that that eats up a lot

1 of time, when we can be better preparing this case
2 for trial and pulling the testimony together.

3 They said they could have their
4 testimony done January 14th. I mean, you know, if
5 it's done, as I said, at the end of November, that
6 cracks the schedule.

7 And it also seems to me, Judge, you've
8 got the discretion, you know, to deny the taking of
9 depositions, and it seems to me the intervenors have
10 to make some showing of relevance or value in a case
11 that's now three years old before they launch a -- I
12 mean, this is a big deal, I don't have to tell you
13 that, 20 depositions. And we would expect that we
14 would have two a day, at least, so we can get them
15 out of the way, which is what's normally done at the
16 end of a discovery situation.

17 JUDGE SAINSOT: I have no idea who they're
18 deposing. I'm assuming that it's all legitimate and
19 not duplicative of pretrial testimony and all that.

20 You know, on the other hand, taking a
21 deposition can be a lot faster in terms of getting
22 information in interrogatories. So there's that.

1 And fast is good.

2 Well, I'm going to try to leave you
3 alone and work this out within these two parameters.
4 Again, Mr. Mulroy, I don't think it's possible to get
5 it done by the end of the year; however, even May,
6 which is what you talked about before, I think is
7 probably too far out.

8 So if you can devise a schedule, and
9 you'd have to start working back, in the winter or
10 spring, and I mean cold spring, not May, of '05, and
11 please try and listen to one another.

12 MR. MULROY: On your way out, I would just like
13 to tell you that trying this case in November this
14 year is not posture, it's something that the company
15 feels from a financial situation, public relations
16 situation it has to do.

17 Secondly, and you know this as well as
18 I do, on LaSalle Street, Judges say you're going to
19 trial on such and such, and if you complain that you
20 haven't had time to read a paper or take a
21 deposition, the Judge says you're still going to
22 trial on such and such.

1 And I guess I think that you have the
2 discretion to order a shortened date based on this
3 record, and that's what we're urging you to do.

4 MR. JOLLY: I'm not certain why Mr. Mulroy
5 continues to argue for a trial date since you've
6 given your opinion on that.

7 JUDGE SAINSOT: Well, my take on it is that his
8 client is insisting on it. That's just my take.
9 Clients are entitled to opinions, if that's correct,
10 and they're certainly entitled to have positions.

11 I will take that under advisement,
12 Mr. Mulroy, and I will -- and it's not -- as I said
13 at the last hearing, it's not only Peoples Gas, it's
14 also the people of the State of Illinois that we have
15 to focus on.

16 So I am going to leave you alone for
17 ten minutes. I don't know if it will help, but at
18 this point it certainly can't hurt.

19 MR. CLARKE: If I might just very briefly, if
20 we're talking about the people of the State of
21 Illinois, that's my client. And it's certainly not
22 posturing for the people of the State of Illinois to

1 want to understand what's happened and to want to
2 take the time to properly figure out the way to
3 resolve this case.

4 So we're not posturing either. We
5 want to do the best we can for -- I want to do the
6 best and I'm duty bound to do the best for my client.

7 MR. BRADY: Staff supports the AG's statement
8 on that. And as you are well aware, your Honor, that
9 to get the best result for the people is for staff to
10 fully understand the transactions and the impacts on
11 the PGA.

12 And as far as the period of time in
13 delaying any refund to customers, there is a
14 provision within the rule that allows for interest.
15 So that is not what --

16 JUDGE SAINSOT: Interest of what?

17 MR. WEGING: Interest on the amount to be
18 refunded.

19 JUDGE SAINSOT: Well, that's a whole other
20 issue. It's just going to give me a headache.

21 All right. I'm going to leave you
22 alone for ten minutes.

1 MR. BRADY: Thank you.

2 JUDGE SAINSOT: And please try to get along and
3 come to something. Remember, cold weather.

4 (Whereupon, a discussion was
5 had off the record.)

6 MR. MULROY: Let me just put on the record the
7 proposals and then we can talk about it. These guys
8 haven't had time to get back to us yet.

9 We were urging that the parties move
10 their testimony, pre-filed testimony date from
11 January 14th to December 15th. And then when we do
12 the -- in fact, Mary, maybe you could just read those
13 dates, would you?

14 MS. KLYASHEFF: With staff and intervenor
15 additional direct testimony on December 15th, we were
16 proposing approximately a month for company rebuttal,
17 January 17th. Sometime during the next week,
18 schedule pre-hearing memoranda, case management
19 conference and a pre-hearing status. And then begin
20 hearings roughly February 2nd.

21 MR. MULROY: And the second proposal that goes
22 along with this is that we try to sever some of the

1 issues that won't be added to. For instance, hedging
2 is a good example, so that we could file a motion for
3 summary disposition of hedging, which maybe you could
4 dispose of this year, which would then certainly
5 reduce the length of the hearing.

6 Thirdly, it may be that we'll be able
7 to reduce some of our time in response, which also
8 might be able to push the hearing up closer towards
9 the end of January.

10 JUDGE SAINSOT: Certainly, for the record, any
11 motion that can effectively dispose of an issue or
12 more than one issue is welcomed, and I will do
13 everything I can to see that those are adjudicated
14 with all speed.

15 I have thought from the very beginning
16 that there's just too much on the table and there
17 must be some way of disposing of issues. Not
18 everything is a factual issue. And if it's a legal
19 issue, there's really no point in waiting until after
20 testimony is filed and you file your post-trial
21 briefs. If it's a legal issue, get it out on the
22 table now.

1 MR. MULROY: And that was our plan. We intend
2 to file some papers like that and we intended to file
3 them rather quickly in the hopes that we maybe can
4 come back in front of you so that you can give us
5 some kind of briefing schedule.

6 It seems to me that we can proceed on
7 two tracks then, their continued discovery and your
8 ultimate ruling on some these issues.

9 As it turns out, for instance, in the
10 North Shore case, I think that's only two issues; one
11 is hedging one is something else. So that would
12 reduce that case by half.

13 And it's certainly a huge number here,
14 I think it's over 200 million, depending on how you
15 count, which would also reduce the length of the
16 hearing.

17 And then, if we are able to convince
18 you maybe that a surrebuttal is not called for and
19 not warranted in a case of this age, that would also
20 shorten the schedule.

21 MR. BRADY: Staff hasn't had a chance to talk
22 to the intervenors, but I could give you the third

1 version of our third proposal that we've -- haven't
2 had a chance to run by Peoples because we just walked
3 into the room.

4 As you're aware of, your Honor, last
5 Tuesday when we met, the staff intervenors had come
6 up with a schedule that reduced -- brought the July
7 hearings into May, the first week of May or the
8 second week of May. And we have a schedule that
9 would be able to bring it in about another month
10 until about the second week of April.

11 MR. MULROY: How much time -- I'm sorry, Sean,
12 does that allow us -- how much time have you put in
13 there for Peoples?

14 MR. BRADY: It gives you three weeks -- let me
15 see, one, two, three, three-and-a-half weeks for
16 rebuttal testimony.

17 And since the way the format is, that
18 we would be going with additional direct testimony,
19 staff would like the ability to respond to their
20 rebuttal testimony. So staff asks for a surrebuttal
21 and provides a surrebuttal for -- additional
22 rebuttal.

1 MR. MULROY: How much time is that?

2 MR. BRADY: There is -- staff needs four to
3 five weeks to do its additional rebuttal and then
4 provided two weeks for Peoples Gas.

5 JUDGE SAINSOT: All right. Run the schedule
6 down -- by me, Mr. Brady.

7 MR. BRADY: Sure. The dates?

8 JUDGE SAINSOT: Yes, please.

9 MR. BRADY: All right. The initial direct
10 testimony was January 14th. The Peoples Gas rebuttal
11 testimony is February 7th. The staff and intervenor
12 additional rebuttal testimony would be March 15th.
13 Peoples Gas surrebuttal would be March 29th, with a
14 hearing of April 11th.

15 JUDGE SAINSOT: And you think we're going to
16 get all this evidence in in one day?

17 MR. BRADY: The week of April 11th.

18 JUDGE SAINSOT: Okay. I mean, does staff
19 really need -- do you really need rebuttal and
20 surrebuttal?

21 MR. WEGING: Staff definitely wants the
22 rebuttal opportunity. And to be honest with you,

1 prior to that time period is also to do a little
2 discovery of whatever the company rebuttal is on the
3 additional direct.

4 MR. BRADY: So we need quicker turnaround
5 times.

6 MR. WEGING: Yeah, less than 28 days.

7 MR. BRADY: There may not be any, but depending
8 on what Peoples Gas puts in their rebuttal that is
9 new or a -- typically a case allows for questions.

10 JUDGE SAINSOT: But couldn't you just --
11 couldn't we just have cross-examination or something
12 to take the place of rebuttal and surrebuttal?

13 MR. MULROY: That's fine with us.

14 MR. BRADY: You mean essentially add direct
15 examination?

16 JUDGE SAINSOT: No, but if you want to counter
17 rebuttal testimony, you can do that. You don't
18 need -- I mean -- usually cross-examination suffices.

19 MR. WEGING: Well, except that we had -- staff,
20 I know, had additional rebuttal on the existing
21 issues even before the reopening of the case. And at
22 some point, that information has to be submitted.

1 The trouble is that from our
2 viewpoint, every issue in this case has been kind of
3 reopened and kind of left in the air, because we
4 don't know what the number is going to end up on
5 anything is going to be.

6 JUDGE SAINSOT: Well, that gets back to my
7 point about if you're going to take depositions,
8 start taking them. That's the fastest way to get
9 information.

10 I mean, I'm not saying -- I have no
11 idea who you're deposing, so if you have to file a
12 motion, you have to file a motion. But that is the
13 fastest way to get things in order and to get the
14 lawyers informed as to what went on. It's the
15 fastest way I can think of, unless somebody else has
16 another idea.

17 MR. REDDICK: I don't know whether it's faster
18 but there is another idea that I think we should
19 discuss. As Sean said, that staff was out the room,
20 and the remaining intervenors did have some
21 discussions, parts of which we discussed with Peoples
22 and parts of which we did not.

1 And we certainly don't want to be in a
2 position of curtailing staff's opportunity to do the
3 complete job we hope they will do, but the schedule
4 that we came up with was slightly more aggressive.

5 Our focus was twofold, first to find a
6 cold spring date for trial, as you suggested, and
7 second to --

8 MS. SODERNA: We listened.

9 MR. JOLLY: We consulted the Farmers Almanac.

10 JUDGE SAINSOT: Well, when you live in Chicago,
11 it's easy, cold weather sticks out in your mind.

12 MR. REDDICK: Well, we took that to mean early
13 in the spring season.

14 And second, to retain what we think is
15 at this point the most important date for us, which
16 is the preparation of the direct, the additional
17 direct testimony, which would entail completing the
18 discovery, reviewing the information and preparing
19 the direct testimony.

20 So we began with those two
21 imperatives, and we feel very strongly that we can't
22 really do the job we need to do before January for

1 filing testimony.

2 In our discussions with Peoples,
3 Peoples indicated they would need at least four weeks
4 for responding to that testimony. And like staff, we
5 would like an opportunity to respond, so we thought
6 two or three weeks would be necessary to do that.

7 And we told Peoples we would be
8 willing to squeeze any other dates. The other dates
9 can be squeezed as necessary.

10 But filing in mid January additional
11 direct, giving Peoples four weeks to respond would
12 put us in mid February. An additional two or
13 three weeks after that gets us early March, and we
14 can set trial dates in March.

15 JUDGE SAINSOT: So, Mr. Reddick, what you're
16 saying is --

17 MR. REDDICK: We figured it would be the last
18 week of March or first week of April is where it
19 would end up if we got into surrebuttal and motion
20 practice and motion in limine and resolving those
21 matters and go to trial quickly.

22 JUDGE SAINSOT: Well, what was --

1 Ms. Klyasheff, what was your date?

2 MS. KLYASHEFF: February 2nd.

3 MR. MULROY: So much of this depends on what
4 kind of information is contained in the newly filed
5 evidence. It may not be we won't need four weeks,
6 for instance, it may be that we'll need a lot less.

7 Maybe I should urge you to see if we
8 can't push the pre-filed testimony up a little bit in
9 January. I would prefer it in December, but a little
10 bit closer to the first of the year.

11 JUDGE SAINSOT: How about we cut off a? Week,
12 that should give you enough time seriously.

13 January 14th is a Friday, so January
14 7th for intervenor and staff additional direct
15 testimony.

16 So that would raise Peoples' rebuttal
17 up to --

18 MR. MULROY: Why don't you give us three weeks,
19 Judge.

20 JUDGE SAINSOT: Okay. So now we're looking at
21 the end of February -- or the end of January, excuse
22 me.

1 MR. BRADY: That would be January 28th.

2 JUDGE SAINSOT: January 28th.

3 So what, you had five weeks here, you
4 don't -- can we do this a little shorter time than
5 five weeks, three weeks for staff and the intervenor
6 rebuttal.

7 MR. BRADY: If we can get the guarantee of
8 quicker turnaround time than 28 days from Peoples Gas
9 on data requests.

10 MR. MULROY: Beginning when? Data requests in
11 next year or now or what?

12 MR. WEGING: Data requests to your rebuttal
13 testimony.

14 MR. MULROY: You're going to go through more
15 discovery after all this.

16 MR. WEGING: You're going to say why and we're
17 going to ask you, well, how --

18 MR. MULROY: That's what cross-examination is
19 for I thought.

20 MR. WEGING: Well, if you want to remove
21 issues, the easiest way is to find out what
22 everyone's position is based on, but sometimes you

1 find out that the other side actually has a good base
2 and you withdraw your issue. That's happened many
3 times at this agency.

4 JUDGE SAINSOT: All right. So this is what I'm
5 going to do with this: You're getting three weeks
6 for additional rebuttal, which would be --

7 MS. SODERNA: February 18th.

8 JUDGE SAINSOT: February 18th.

9 Then I'm going to schedule a status
10 hearing, just to make sure we're all on track, for
11 the following week. February 22, we will not be
12 here. You want to say February 23rd at 1:00, does
13 that meet everybody's schedule?

14 MR. BRADY: Yes, your Honor.

15 JUDGE SAINSOT: Now we have surrebuttal for
16 Peoples, which before was two weeks.

17 MR. MULROY: And should stay at two weeks.

18 JUDGE SAINSOT: Okay. So we're looking at
19 March 4th according to my calculations.

20 MR. REDDICK: Right.

21 MR. MULROY: I'm sorry to interrupt you, but
22 let's assume that Peoples decides not to file

1 surrebuttal, I don't want -- you wouldn't want to
2 have dead time in here. How would that work?

3 JUDGE SAINSOT: Well, would you know at the
4 status hearing on February 21st?

5 MR. MULROY: I think we would, yes.

6 JUDGE SAINSOT: That's one of the reasons I
7 thought --

8 MR. MULROY: I think we would.

9 JUDGE SAINSOT: Plus if you have difficulty
10 orchestrating what's going on with discovery or not
11 discovery or -- I thought this would be a good time
12 to make sure we're all on track.

13 MR. MULROY: It just seems to me that even
14 under this schedule that you're dictating, there's a
15 shot that we could begin this in late February,
16 depending on what Peoples does.

17 JUDGE SAINSOT: Fine with me, but I'm a little
18 uncomfortable saying on behalf of -- as far as I'm
19 concerned, you can try the case tomorrow is what I'm
20 saying, but you know, there are other --

21 MS. SODERNA: February 23rd is three business
22 days -- you know, that only leaves three business

1 days left in February, and you won't be apprising the
2 parties of --

3 JUDGE SAINSOT: Wait, don't -- it's okay. I'm
4 just saying that -- it's okay --

5 MS. SODERNA: I'm a little sensitive. I'm
6 sorry.

7 JUDGE SAINSOT: I'm just saying that from my
8 perspective, it doesn't make any difference. From
9 your perspective, it might be completely different.

10 All right. So then we have Peoples'
11 surrebuttal Friday, March 4th.

12 And how long do we have between the
13 surrebuttal or how long do you think it's going to
14 take, and prehearing memo and all that?

15 Should we mess up everybody's
16 St. Patrick's Day and have it that week?

17 MR. MULROY: Oh, yeah, I mean --

18 MR. WEGING: But we'll be free for St. Joseph's
19 Day.

20 MR. MULROY: The prehearing memo should be well
21 underway by the time of this status.

22 MR. WEGING: Or we could skip it altogether.

1 MR. MULROY: We could skip it.

2 JUDGE SAINSOT: The prehearing memo.

3 MR. MULROY: Yeah. If we file motions for
4 summary disposition and other motions, you may not
5 need one. That's totally up to you.

6 JUDGE SAINSOT: Well, that's true. I mean, it
7 depends on how much of a road map I have left to --
8 all right, so why don't we do this --

9 MR. BRADY: Right now we have the pretrial memo
10 two weeks before the hearing.

11 JUDGE SAINSOT: At the status hearing in
12 February, we will decide whether we're having
13 pretrial memos.

14 MS. KLYASHEFF: Currently you have the status
15 after the staff and intervenor rebuttal, one purpose
16 of which would be to see if the company plans to do
17 surrebuttal.

18 JUDGE SAINSOT: Right.

19 MS. KLYASHEFF: Would another consideration be
20 to plug a status after the company rebuttal testimony
21 to ascertain if we need the last two rounds of
22 testimony, staff, intervenor rebuttal and company

1 surrebuttal? What if those two rounds could both
2 disappear?

3 MR. MULROY: Yeah, we'd certainly like to make
4 a presentation to you along those lines, and we could
5 do it formally in writing.

6 JUDGE SAINSOT: I have no objection to it. I
7 don't know how successful you'll be. They seem
8 pretty ingrained in their positions but --

9 MR. MULROY: It just seems to me that that's at
10 your discretion as well.

11 JUDGE SAINSOT: Right. I'm just saying you
12 might have a little fight there.

13 MR. MULROY: What a surprise.

14 MR. REDDICK: I think that would be useful for
15 different reasons. I mean, Peoples is obviously free
16 to propose things for our case, but we might object.

17 But I think staff's discovery point
18 might be a good reason to have something between the
19 two.

20 JUDGE SAINSOT: So we're looking at something
21 the third week in February; is that right, right
22 after --

1 MS. KLYASHEFF: This would be after the company
2 rebuttal, which is currently January 28th, so late
3 January, early February.

4 JUDGE SAINSOT: How about Wednesday, February
5 2nd, at 1:00 o'clock.

6 MR. REDDICK: Well, if I -- I'll just throw
7 this out. I think it might be more useful later so
8 that we can have some indication of how the discovery
9 is going. That would only be four days after we got
10 the materials.

11 JUDGE SAINSOT: Okay.

12 MR. BRADY: May I suggest the 8th?

13 JUDGE SAINSOT: The 8th is fine with me. And
14 1:00? I'm choosing 1:00 o'clock because on Tuesday
15 and Wednesday, there are Commission meetings, and at
16 1:00 o'clock they usually don't have them. And I
17 don't have the calender in front of me.

18 MR. BRADY: Your Honor, then are you going to
19 request a one-week turnaround time on data requests
20 or order that to accommodate this three-week
21 interval?

22 JUDGE SAINSOT: If the discovery requests

1 are -- one week makes me a little nervous -- are in
2 conformance with the guidelines that I gave you at
3 last week's status hearing, then two weeks.

4 Two weeks?

5 MR. MULROY: (Shaking head up and down.)

6 MR. BRADY: I guess it may impact our ability
7 to include our response in our -- I'm sorry. Let me
8 take a look at something.

9 The 28th and 18th, that's only
10 three weeks. That's fine, but I'll acknowledge that
11 may impact our ability to include that in our
12 rebuttal testimony or additional rebuttal testimony.

13 JUDGE SAINSOT: Well, I'm a little hesitant
14 just to require one week.

15 MR. BRADY: Okay.

16 MR. REDDICK: If -- at the risk of being
17 greedy, if we can make it ten days, then we have some
18 indication after the testimony, if we have a status
19 on the 28th, that's less than the response time, and
20 we'll have no idea what is happening with discovery
21 and we won't have another scheduled hearing.

22 JUDGE SAINSOT: Assuming that there is

1 discovery propounded.

2 MR. REDDICK: I got the strong indication from
3 staff that they were going to be doing that. So I
4 was trying to find a date to give us some indication
5 as to how discovery is going.

6 JUDGE SAINSOT: Is ten days feasible for
7 Peoples' discovery, assuming the discovery requests
8 are narrow.

9 MR. MULROY: Of course it is, and assuming you
10 overrule our objections if we have any.

11 JUDGE SAINSOT: Okay. So it's not 14 days,
12 it's 10 days for discovery requests.

13 Okay. So where are we now in.

14 MR. REDDICK: We are 3/4 Peoples Gas with
15 rebuttal.

16 JUDGE SAINSOT: Is the week of St. Patrick's
17 Day doable? First week in March? First week in
18 March, we're talking about status hearing for
19 pretrial motions, et cetera and having a settlement
20 conference, or do you think having a settlement
21 conference may help things along somehow.

22 MR. REDDICK: The day after?

1 MR. BRADY: I don't know about the day after.

2 MR. WEGING: We have a status on February 3rd,
3 which at that point we will have a better idea of how
4 things are going out, because at that point the only
5 thing left are company surrebuttal and
6 prehearing-type matters.

7 JUDGE SAINSOT: Right.

8 MR. WEGING: If we're trying to set it now.

9 MR. BRADY: You're suggesting setting a date on
10 February 3rd status hearing. What, we are going to
11 be going to trial, we may be adjusting the schedule
12 anyway at that date.

13 JUDGE SAINSOT: Adjusting what schedule?

14 MR. BRADY: The February 23rd hearing, we're
15 going -- I thought there was the possibility that
16 Peoples Gas could -- say we don't have any
17 surrebuttal testimony, let's just go to trial.

18 JUDGE SAINSOT: We are all clear we're not
19 spreading this out, we can spread it in but we're not
20 spreading it out. I want to make sure.

21 I would like to have a status hearing
22 even if it's short, right, the week before trial.

1 So is it -- if we have trial the week
2 of St. Patrick's Day, which is March 14, is that
3 good?

4 MR. BRADY: With Thursday off?

5 JUDGE SAINSOT: With Thursday off for
6 Mr. Brady.

7 MR. BRADY: Thank you.

8 JUDGE SAINSOT: Okay. So then, the week before
9 that -- I don't know, any thoughts about when we
10 should have a settlement conference, before the
11 status hearing or after the status hearing? Does it
12 matter?

13 MR. REDDICK: I think after makes more sense
14 whether or not we are waiting for additional
15 testimony whether everything is on the table.

16 JUDGE SAINSOT: So we'll have a settlement
17 conference March 9th at 1:00 o'clock, and March 10th,
18 we'll have the status hearing at 1:00 o'clock.

19 This should be easy for everyone to
20 remember, they're all 1:00 o'clock.

21 And the trial will begin on March 14th
22 at 10:00 o'clock.

1 MR. MULROY: Or possibly sooner.

2 JUDGE SAINSOT: Or possibly sooner, but not
3 later. It's always cold in March.

4 MR. MULROY: I have a suggestion, a time-saving
5 suggestion, which you'll like. We are intending to
6 file a motion for disposition on hedging for sure and
7 probably some other issues.

8 Would it be convenient for you to set
9 a briefing schedule now so we don't have to come back
10 in? Like when we file it, they respond in two weeks?

11 MR. REDDICK: If it's a dispositive, we'll need
12 the entire time allowed by the rules.

13 JUDGE SAINSOT: Which is what?

14 MR. REDDICK: I think two weeks.

15 JUDGE SAINSOT: For a dispositive motion?

16 MR. JOLLY: Just for motions generally, I think
17 it's 14.

18 JUDGE SAINSOT: I don't want to give anybody
19 ideas but two weeks for a summary judgment motion is
20 kind of short.

21 MR. MULROY: I guess what you're saying is we
22 don't need to ask you for a briefing schedule, there

1 is one in the rules?

2 MR. REDDICK: There is one in the rules, yes.

3 JUDGE SAINSOT: You may not be able to do it in
4 two weeks.

5 MR. REDDICK: I understand. And depending on
6 what they file, if that's appropriate, we would file
7 a motion with you for a briefing schedule that vary
8 from the rules.

9 MR. MULROY: And maybe you could call us before
10 and maybe we could file some agreed motion. How does
11 that sound?

12 MR. JOLLY: That's fine.

13 MR. REDDICK: (Shaking head up and down.)

14 JUDGE SAINSOT: It makes me very nervous to
15 have two weeks for a motion. It may chunk off part
16 of the case.

17 MR. REDDICK: That's right.

18 MR. MULROY: We could agree right now to
19 three weeks, as long as we're here.

20 MR. REDDICK: Right.

21 JUDGE SAINSOT: All right. Is there anything
22 else here?

1 (No response.)

2 I'm going to bring this up, and I'm
3 not suggesting that you do anything, but I think it's
4 better that I bring this up now rather than wait and
5 see what you do on your own.

6 MR. REDDICK: Why?

7 JUDGE SAINSOT: Because I have not had great
8 success in the past along these lines. And again,
9 I'm not telling you or trying to encourage anybody to
10 go along these routes. What I'm trying to do is head
11 off disputes and make things go quickly and with a
12 little less acrimony.

13 So that is my only intention is that
14 if you are going to go down this particular route,
15 these are the things that I want you to do, and I'm
16 talking about electronic discovery.

17 And again, I'm not saying that you
18 should do it, but I don't want to get in a situation
19 like we've been in the past. First of all, I want a
20 meeting between the lawyers and the tech people, I
21 mean lawyers for Peoples and lawyers from the
22 propounding people and all the tech people together

1 so that you all are on the same page with -- in terms
2 of technology.

3 And at that meeting, if you want
4 something -- I have seen cases, and I'll give you a
5 cite, where alternative means to a production request
6 was done, which is less expensive, and I don't know
7 if that will work, but if you have the tech people
8 there, you know, you can ask them.

9 And here's the cite I'm going to give
10 you: It's Settar, S-e-t-t-a-r, versus Motorola 138
11 Fed 3D 1164. It's a 7th Circuit case. I think it's
12 2004.

13 MR. JOLLY: 138 F 3rd what?

14 JUDGE SAINSOT: 1164.

15 MR. JOLLY: Thank you.

16 JUDGE SAINSOT: Okay. If your search requests,
17 and I know you're not going to want to hear this, but
18 if your search requests are of deleted files, I want
19 you to draft a test run, a sample of what you're
20 looking for. Again, make it as specific as possible
21 what -- and then tender the test run to Peoples.

22 Peoples then should prepare an

1 affidavit detailing the results of searches and how
2 much time and money spent with the test run. I want
3 no more than four sample questions in the test run.

4 Okay --

5 MR. MULROY: Judge, let me make sure I'm
6 following you.

7 If these guys intend to ask more
8 questions which involve for drafting with Peoples at
9 that point, we should meet with our electronic techs
10 and People.

11 JUDGE SAINSOT: I think they should meet with
12 you before they draft the questions.

13 MR. MULROY: Because we have actually done this
14 before. Let me suggest to everybody that would be
15 more helpful to our IT people if we had the
16 questions.

17 JUDGE SAINSOT: Well, I'm not --

18 MR. MULROY: Or at least some of them.

19 JUDGE SAINSOT: Then meet with the test run
20 then.

21 MR. CLARKE: That mixed a couple issues. Am I
22 correct in understanding that the test run was for

1 questions for deleted files?

2 JUDGE SAINSOT: For deleted files, yeah.

3 MR. CLARKE: But I'm not trying to play tricks,
4 I'm just trying to understand what you're asking us
5 to do. The deleted -- if we ask for electronic
6 discovery, we don't need a test run, right?

7 JUDGE SAINSOT: I don't think so.

8 MR. CLARKE: Okay.

9 JUDGE SAINSOT: It's my understanding, given
10 what Peoples has said, that it's the deleted files
11 that are the expensive things. And the test run is
12 designed to see a percentage of hits, that's the
13 purpose of it, to see how much information is used.

14 MR. MULROY: I'm sorry to throw this curve in,
15 but actually, they're both expensive to launch at
16 this point. So I think that your sample question
17 idea is great.

18 I would like you to consider using it
19 for both deleted and non-deleted files.

20 JUDGE SAINSOT: If they're both expensive,
21 that's appropriate.

22 MR. MULROY: Yeah.

1 JUDGE SAINSOT: So --

2 MR. REDDICK: I'm not sure --

3 MR. CLARKE: I think we were on to something
4 with having a meeting with IT people with questions
5 in hand, what can we do.

6 MR. MULROY: That would be great. Maybe we can
7 do this ourselves. If you can draft questions that
8 are going to be similar, then we can do a test run on
9 those one or two questions or tell you what it's
10 going to involve. Then if we have to come back, we
11 can come back. But the key things to have are IT
12 people together. We're in agreement about that.

13 MR. REDDICK: Why don't we stop there. I was
14 confused by the hits.

15 JUDGE SAINSOT: The idea of the test run is to
16 see -- is just to take a sample, and I got this from
17 case log, believe it or not, I had nothing better to
18 do this weekend than to research this -- no, I
19 shouldn't say that. But the idea from a test run,
20 and I'll give you two cases that I looked at, and I'm
21 sure there are more out there, is to see if by
22 continuing with the request, whether you're going to

1 get useful information.

2 So what would happen in these cases is
3 that if you get a 3 percent on useful information,
4 we're probably not going to go any further. If you
5 get 40-some percent, that would be different.

6 Do you understand what I'm saying?

7 MR. REDDICK: Useful is inherently subjective.

8 JUDGE SAINSOT: Well, I agree with you.

9 But, actually, I think the better way
10 to phrase it is a percentage of useful information.
11 You may not agree on useful, but I think it's pretty
12 obvious what would be just junk.

13 MR. CLARKE: I think you suggest a good one to
14 run a do documents exist or do no documents exist.
15 If no documents exist, I mean, that knowledge is
16 somewhat useful, but that leaves out the looking at
17 the documents that come up and say, well, they're
18 useful, well, they're useless.

19 I wouldn't want a whole pile of
20 documents to come up and then argue whether or not
21 they're useful or not to see them.

22 JUDGE SAINSOT: You'd have to see them.

1 MR. REDDICK: My point is this: At this stage,
2 we have fairly firm dates.

3 MR. MULROY: Fairly? I heard that, Conrad, you
4 said fairly.

5 MR. REDDICK: We have a status on the 23rd to
6 decide what the rest of the schedule is. So we're
7 not looking at a situation where we are talking about
8 taking more time because we got so much stuff.

9 The fact that there is only 3 percent
10 of things --

11 JUDGE SAINSOT: That's good.

12 MR. REDDICK: Those may be very important
13 things. And if we take the burden of filtering in
14 the time available, I'm not sure of the fact that you
15 only got 3 percent when those 3 percent might be very
16 important to cease discovery.

17 JUDGE SAINSOT: What the federal court has done
18 is take the 3 percent situations and make the
19 propounder pay for them, which works in other
20 settings. I can go down that route and allow the
21 City of Chicago, the State of Illinois, and CUB to do
22 that, but is that realistic?

1 MR. REDDICK: I've got a meeting today --

2 MR. CLARKE: On this schedule, no.

3 JUDGE SAINSOT: Is it realistic to really
4 expect any of you that are sitting here in front of
5 me to cough up hundreds of thousands of dollars or
6 even tens of thousands of dollars? Is that
7 realistic?

8 MR. REDDICK: We don't have to have that
9 argument now. In a case of this size, there are --
10 some expense by all parties, I think, is anticipated.
11 You're in the position of making the judgment of how
12 much and for what.

13 JUDGE SAINSOT: Right.

14 MR. REDDICK: But I don't think we are at that
15 point now. I would rather not get into that.

16 JUDGE SAINSOT: That's another reason why you
17 have the affidavit from Peoples saying how much this
18 costs, so that we're clear about where we're -- you
19 know, what would be involved.

20 And I haven't made a determination one
21 way or the other, but I would on that issue, but
22 you're certainly welcome, if that's the situation, to

1 bring it up at that point in time. And again I'm not
2 suggesting that you conduct electronic discovery.
3 What I'm trying to do is avoid impasses.

4 MR. REDDICK: Absolutely. I'm not suggesting
5 that if we ran up on one of those 3 percent
6 situations, we would necessarily insist on going
7 forward. I was uncomfortable that 3 percent was an
8 automatic stop.

9 JUDGE SAINSOT: There are not a lot of cases on
10 this. I just happened to stop on 3 percent, that was
11 a random.

12 I will give you two cites, they're
13 federal cases, if you want to look at cases where
14 they impose this test. Again, this sample is imposed
15 to determine in federal cases who's going to pay:
16 Zebulake, Z-e-b-u-l-a-k-e, versus Warburg,
17 W-a-r-b-u-r-g, 217 federal rules decision 309. And
18 it's a New York case, 2003 New York case.

19 Then here's one more: Weggington
20 versus C.B. Richard Ellis, 2004, U.S. District Lexis
21 15722, that's an Illinois 2004 case.

22 MR. REDDICK: What was the last number again?

1 JUDGE SAINSOT: 15722.

2 Okay. Is there anything else we need
3 to discuss?

4 (No response.)

5 Okay. Good. Thanks.

6 MR. JOLLY: Thank you.

7 MR. REDDICK: Thank you.

8 MR. MULROY: Thank you.

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CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)
CASE NUMBER: 01-0707
TITLE: Peoples Gas

I, Carla L. Camiliere, do herby
certify that I am a court reporter contracted by
SULLIVAN REPORTING COMPANY of Chicago, Illinois; that
I reported in shorthand the evidence taken at the
proceedings had in the hearing of the above-entitled
case on the 27th day of September 2004; that the
foregoing 64 pages are a true and correct transcript
of my shorthand notes so taken as aforesaid and
contains all of the proceedings directed by the
Commission or other person authorized by it to
conduct the said hearing to be stenographically
reported.

Dated at Chicago, Illinois, this 18th
day of October 2004.

Carla L. Camiliere

State of Illinois
ILLINOIS COMMERCE COMMISSION

01-0707

(To be filed with the Chief Clerk)

MINUTES

Chicago, Illinois
September 27, 2004

CASE NO: 01-0707

SUBJECT: ILLINOIS COMMERCE COMMISSION,
On Its Own Motion, vs.
PEOPLES GAS, LIGHT AND COKE COMPANY.
Reconciliation of revenues collected under
gas adjustment charges with actual costs
prudently incurred.

HEARD BY: Ms. Claudia Sainsot, ALJ

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DISPOSITION: Cont. to August 4, 2004, at
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EXHIBITS FILED: None.

REPORTED BY: Carla L. Camiliere, CSR

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